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No. 890

In the
Supreme Court of the United States
October Term, 1969

JEROME B. BLUHM,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No.

JEROME B. BLUHM,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Petitioner, Jerome B. Bluhm, prays that a Writ of Certiorari issue to review the corrected opinion and judgment of the Court of Appeals for the Seventh Circuit rendered in these proceedings on September 9, 1969 after a timely petition for rehearing had been denied on September 5, 1969.

OPINIONS BELOW

The corrected opinion of the Court of Appeals, as yet unreported, appears at Appendix A, page 1a, and the order denying a rehearing appears also at Appendix A, page 9a. The opinion of the District Court for the North-

ern District of Illinois appears at Appendix B, page 10a and is reported at 287 Fed. Supp. 886.

JURISDICTION

The opinion and judgment of the Court of Appeals was originally entered on July 25, 1969. On September 5, 1969 the Court of Appeals entered an order denying petitioner's timely petition for rehearing (Appendix A, page 9a), and on September 9, 1969, filed its corrected opinion (Appendix A, page 1a).

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Whether 28 U.S.C., Section 2410, which relates to foreclosure of liens when government liens are involved, effectively waives immunity on the part of the United States without eliminating available state procedures.

2. Whether the case of *U.S.* v. *Brosnan*, 363 U.S. 242 requires the United States to be an indispensable formally named party in state proceedings to foreclose liens where the United States is the senior lien holder.

3. Whether the super priorities created by the Federal Tax Lien Act of 1966 apply only to original liens involved and not to interests derived through such liens.

4. Whether the Federal Tax Lien Act of 1966 applies retroactively to any lien or interest derivative of such lien where a competing Federal lien has not been finally enforced by a civil action or suit which has become final by judgment, sale or agreement before date of enactment of such Act.

5. Whether state *in rem* proceedings are binding on the United States where the Court has jurisdiction of the *res* and the United States is properly notified in accordance with the state law, but chooses not to intervene in such proceeding.

STATUTES INVOLVED

This case involves Section 263 of the Revenue Act of Illinois (Chap. 120 I.R.S., §744); Section 266 of the Revenue Act of Illinois (Chap. 120, §747); Section 270 of the Revenue Act (Chap. 120, I.R.S., §751); Section 2410 of Title 28, United States Code; Section 6323 of Federal Tax Lien Act of 1966 (Title 26, U.S.C., §6323); and Section 114 of Federal Tax Lien Act of 1966. These statutes are reprinted as to pertinent portions in Appendix C, page 18a.

STATEMENT OF THE CASE

This case involved the filing of proceedings by the United States of America against John A. Amos and Gertrude Amos, taxpayers, to reduce to judgment certain Federal tax liens against said taxpayers for delinquencies arising from the years 1950 to 1957 for a total principal amount of $181,823.97 plus interest, and to foreclose said liens against a certain residential parcel of real estate owned by said taxpayers, commonly known as 831 Ashland, Wilmette, Illinois.

Petitioner, Jerome B. Bluhm, was allowed to intercede in the proceedings as beneficiary of Chicago Title and Trust Company Trust Number 42275 and he claimed such Trust derived clear title to the premises being foreclosed in this action through a tax deed proceeding that was processed in the Circuit Court of Cook County, Illinois

wherein the Federal tax liens involved were extinguished and a tax deed conveying good title was issued to a predecessor in title. By mesne conveyances the petitioner acquired title when he conveyed to the Trust.

The Amos' had been delinquent on payment of real estate taxes for the year 1960 and in 1962 the real estate was sold at a tax sale wherein a tax certificate was issued to Bonded Municipal Corporation, one of Petitioner's predecessors in title. Since no redemption was made within statutory time, Bonded Municipal Corporation commenced proceedings in the Circuit Court of Cook County for issuance of a tax deed in accordance with Illinois statutory procedures.

In the proceedings in the Circuit Court of Cook County, Illinois, although the United States of America was not formally joined as a party, in accordance with Illinois statutory procedure, personal service of notice of the proceedings was had upon both the District Attorney for the Northern District of Illinois and the Director of Internal Revenue Service of Chicago, and the Attorney General of the United States, Department of Justice, was served by registered mail. The United States did not intervene or become part in the state proceedings after it had received such notice. The Circuit Court directed the issuance of a tax deed to Bonded Municipal Corporation which under Illinois law conferred good title and extinguished the federal liens.

In the District Court respondent made a motion for summary judgment as to the claim of petitioner, and the court granted said summary judgment, holding that pursuant to provisions of the Federal Tax Lien Act of 1966, the real estate tax liens from which said petitioner derived

title had priority in relation to federal tax liens involved only to the extent of the actual real estate tax liens. The court further held that the proceeding in the Circuit Court of Cook County, Illinois did not extinguish the Federal tax liens and thereby did not give said petitioner good title to said property.

The decree of the District Court was appealed to the United States Court of Appeals for the Seventh Circuit, who affirmed the lower court decision. The Court of Appeals held that the United States had not given its consent to be sued in the state court and therefore its lien was not extinguished and further that the super priorities given by the Federal Tax Lien Act of 1966 did not apply to the lien through which petitioner derived title, since such lien was extinguished when the taxes were originally sold to Bonded Municipal Corporation. A timely petition for rehearing was denied by the said Court of Appeals and a corrected opinion was filed in the said court.

ARGUMENT

I. THE OPINION OF THE COURT OF APPEALS INVOLVES AN IMPORTANT QUESTION OF FEDERAL LAW PERTAINING TO THE APPLICATION OF THE FEDERAL TAX LIEN ACT OF 1966, WHICH HAS NOT BUT SHOULD BE SETTLED BY THIS COURT.

The Federal Tax Lien Act of 1966 has never been reviewed by this Court.

The issues involving important federal questions in the instant case pertaining to the Federal Tax Lien Act of 1966 that were decided by the Court of Appeals and should be reviewed by this Court are two-fold:

A. Whether the super priorities of the Act apply to local tax liens where the taxes have been sold;

B. Whether the Act applies retroactively to interests derived from local tax liens when the federal liens have not been finally enforced by a civil action or suit which has become final by judgment, sale or agreement before date of enactment of Act.

Petitioner respectfully contends that the Court of Appeals erred in holding that the super priorities of the Federal Tax Lien Act of 1966 do not apply retroactively to local tax liens that were purchased.

The Court erred further in holding the Act does not apply retroactively to interests derived from local tax liens although the civil action to enforce such liens was pending at the time of enactment of the Act and was not final.

It is of utmost concern that this Court review the correctness of the decision of the Court of Appeals because most litigated disputes arise not from the immediate determination of the priority of liens as such, but rather from the determination of the effectiveness of titles derived from such liens or the effect of proceedings to extinguish such liens.

If the decision of the Court of Appeals is correct, this will mean that no tax buyers of local government taxes or assessments will be entitled to super priorities of the Federal Tax Lien Act of 1966 since pursuant to this decision the liens are extinguished at the time the taxes or assessments are purchased.

This interpretation flaunts the intent of Congress and the specific language of Section 114 of the Federal Tax Lien Act of 1966 which, in part, reads as follows:

> "Effective Date.
>
> (a) General Rule.—Except as otherwise provided, the amendments made by this title *shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.* (Emphasis Added).
>
> (b) Exceptions.—The amendments made by this title shall not apply in any case—
>
> (1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or
>
> (2) in which such amendments would—
>
> (A) impair a priority enjoyed by any person (other than the United States) hold-

> ing a lien or interest prior to the date of enactment of this Act;
>
> (B) operates to increase the liability of any such person; or
>
> (C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act."

The legislative history reflects that the Act is to apply after date of enactment, regardless of when a lien or title of the United States arose or when a lien or interest of any other person was acquired. (Senate Report Number 1708, 1966 U.S.C. Congressional and Administrative News, Page 3756-57).

It is self-evident that the exceptions in Section 114 do not apply since in the instant case the lien of the United States had not been finalized by a civil action. The clear language of Section 114 (a) that the Act shall apply after date of enactment . . . "regardless of when a lien or a title of the United States arose or when the lien or *interest* of any other person was acquired" emphasizes the intent of the Act to protect a derivative title as in the instant case as well as a bare lien itself. This intent is directly in conflict with the decision of the Court of Appeals.

II. THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH THE DECISION IN THE THIRD CIRCUIT, NAMELY, UNITED STATES v. BLEASBY, 257 FED. 2ND 278.

The case of *United States* v. *Bleasby,* 257 Fed. 2d 278, decided by the Court of Appeals for the Third Circuit, is in direct conflict with the instant decision of the Court of Appeals for the Seventh Circuit. In *Bleasby,*

the Third Circuit held that where the state court had jurisdiction of the res in an *in rem* action, and a notice was served upon the United States as required by the state statute but the United States failed to respond, the United States was bound by the decision.

In the instant case an *in rem* action is involved (*Urban* v. *Lois,* 29 Ill. 2d 542) and the court had jurisdiction of the *res* (the real estate involved). Notices of the said proceedings were served on the United States (both by personal service and registered mail) in accordance with the State statute. The United States failed to respond and therefore, in accordance with *Bleasby* and contrary to the holding of the Court of Appeals in the instant case, the United States should be bound by the decision.

III. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH UNITED STATES v. BROSNAN, 363 U.S. 237.

The Court of Appeals in the instant case held that the sovereign immunity of United States was not waived and it was an indispensable party to the State court proceedings. This is contrary to the holding of this Court in *United States* v. *Brosnan,* 363 U.S. 237.

In *Brosnan* this Court held that the only apparent purpose of Section 2410, Title 28, U.S.C., was to "lift the power of sovereign immunity which had heretofore been considered to work a particular injustice on private lienors." (page 246 of decision). This Court in such decision, on page 243 further stated:

> "We believe that, so far as this Court is concerned, the need for uniformity in this instance is outweighed by the severe dislocation to local property relationships which would result from our disregard-

ing state procedures. Long accepted non-judicial means of enforcing private liens would be embarrassed, if not nullified where federal liens are involved, and many titles already secured by such means would be cast in doubt. We think it more harmonious with the tenets of our federal system and more consistent with what Congress has already done in this area, not to inject ourselves into the network of competing private property interests by displacing well-established state procedures governing their enforcement or superimposing on them, a new federal rule."

Contrary to the holding of this Court in *Brosnan,* the Court of Appeals in the instant case held that since the Federal Tax Lien Act of 1966 did not apply, the federal liens were senior to the local liens and therefore *Brosnan* did not apply.

Petitioner contends that *Brosnan* did not differentiate between federal senior and junior liens. If the cloak of immunity was lifted, then the status of the liens would make no difference.

Brosnan held that Section 2410 of Title 28, U.S.C. merely lifts sovereign immunity. Once the immunity has been lifted, the proceedings are in effect consented to by the United States and the State procedures where the United States was given proper notice is certainly effective in extinguishing federal liens.

If the United States thought that it had a senior lien (or a junior lien) that should have been protected, it should have intervened in the state proceedings to properly present its position instead of collaterally attacking the same in a separate proceeding.

CONCLUSION

Wherefore, it is respectfully requested that this petition for Writ of Certiorari should be granted.

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APPENDIX A

CORRECTED OPINION RENDERED BY THE COURT OF APPEALS, SEVENTH CIRCUIT AND ORDER DENYING PETITION FOR REHEARING

CORRECTED

IN THE
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

SEPTEMBER TERM, 1968 — APRIL SESSION, 1969

No. 17228
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
JEROME B. BLUHM,
Intervening Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JULY 25, 1969

Before KILEY, FAIRCHILD and KERNER, *Circuit Judges.*

KERNER, *Circuit Judge.* The United States sought to enforce a federal tax lien against a parcel of real estate owned by intervening defendant-appellant Bluhm. The District Court granted summary judgment for the United States from which Bluhm appeals.

On December 24, 1966, the United States filed suit to reduce various tax liens to judgment against defendants John A. Amos and Gertrude P. Amos. A default judg-

ment was entered against John and Gertrude Amos in the amount of $210,101.13 and a separate judgment against John Amos, alone, for $9,575.25. The Amos' owned a parcel of real estate located at 831 Ashland, Wilmette, Illinois. Notices of federal tax liens were filed with the Recorder of Deeds as follows:

Taxable Year	Date of Assessment	Date Notice of Tax Lien Filed
1950	May 23, 1958	September 3, 1958
1951	May 23, 1958	September 3, 1958
1952	May 23, 1958	September 3, 1958
1953	May 23, 1958	September 3, 1958
1954	February 3, 1961	April 10 and 24, 1961
1957	September 27, 1963	February 4, 1964
1958	September 27, 1963	February 4, 1964

On February 27, 1962, the Amos' not having paid the real estate taxes for 1960, the real estate was sold at a tax sale and a certificate of sale was issued to Bonded Municipal Corporation. No redemption having taken place within the provided time, Bonded sought the issuance of a tax deed in the Circuit Court of Cook County. In November, 1964, notice of the action in Circuit Court was given to the District Director of Internal Revenue, Chicago, Illinois, the United States District Attorney for the Northern District of Illinois and the Attorney General of the United States, Washington, D. C. The United States did not respond and on June 18, 1965, a tax deed was issued. By mesne conveyances defendant Jerome Bluhm acquired title. Bluhm intervened in the proceedings below and now appeals from an adverse determination.

The provisions of 28 U.S.C. §2410 were not followed in the state court since, although the United States was given notice of this litigation, it was not named a party to the proceedings in the state court and, therefore, the United

States claims that the tax sale in the state court constituted a suit against the United States without its consent.[1]

---

[1] §2410. Actions affecting property on which United States has lien

(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the United States has or claims a mortgage or other lien.

(b) The complaint shall set forth with particularity the nature of the interest or lien of the United States. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

(c) A judicial sale in such action or suit shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States as may be provided with respect to such matters by the local law of the place where the property is situated. A sale to satisfy a lien inferior to one of the United States, shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head of the department or agency of the United States which has charge of the administration of the laws in respect of which the claim of the United States arises.

(d) Whenever any person has a lien upon any real or personal property, duly recorded in the jurisdiction in which the property is located, and a junior lien, other than a tax lien, in favor of the United States attaches to such property, such person may make a written request to the officer charged with the administration of the laws in respect of which the lien of the United States arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to wholly or partly satisfy the lien of the United States, or that the claim of the United States has been satisfied or by lapse of time or otherwise has become unenforceable, such officer shall so report to the Comptroller General who may issue a certificate releasing the property from such lien.

However, in *United States* v. *Brosnan*, 363 U.S. 237 (1960), the Court held that §2410 was not the exclusive remedy where the Government held a junior lien and that the sale of mortgaged property by the sheriff without joining the junior lienholders was not barred by sovereign immunity. Bluhm contends that under *Brosnan* it does not matter whether the United States was a junior or a senior lienholder.

> This Court has repeatedly rejected the contention that because a fee owned by a taxpayer was already encumbered by a lien which enjoyed seniority under state law, the Government's lien necessarily attached subject to that lien. *A fortiori,* the "property" to which the federal lien can attach is not diminished by the particular means of enforcement possessed by a competing lienor to whom federal law concedes priority. 363 U.S. at 241.

The Court in *Brosnan* concluded that even as a junior lienholder, the Government had an interest in the property and rejected the criterion established in *United States* v. *Cless*, 254 F. 2d 590, 592 (3d Cir. 1958), as to whether the Government was an indispensable party under the state law. In *Minnesota* v. *United States*, 305 U.S. 382 (1939), where the United States held the fee in trust for the Chippewa Indians and in *United States* v. *Alabama*, 313 U.S. 274 (1941), where the United States owned the fee, the Court held that the United States was an indispensable party to any proceeding as to the land. While the Court in *Cless* was incorrect in concluding that the criterion was whether or not the United States was an indispensable party under local law, whether or not the Government is an indispensable party under federal law may be determinative.

This court believes that where the United States is the senior lienholder, it is an indispensable party under federal law. The Internal Revenue Code sets out detailed provisions as to the attachment, continuation and release

of tax liens. Int. Rev. Code of 1954 §§6321-6344. Questions arising under these provisions are to be determined under federal law "regardless of whether the federal statutory scheme deals with them or not." *United States* v. *Brosnan*, 363 U.S. 237, 240 (1960). Section 6323 of Int. Rev. Code of 1954 provides that a federal tax lien is not "valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed. . . ." The implication of Section 6323 is that the Government's lien is senior if it attached prior to a competing lienor and notice is given. *United States* v. *Crest Finance Co.*, 291 F. 2d 1 (7th Cir. 1961). If the Government's lien is not the first to attach, the lien of the Government is junior, and the Government under federal law is not an indispensable party in a state court proceeding. *United States* v. *Brosnan*, 363 U.S. 237 (1960). However, where the Government is the holder of a senior lien, the Code would seem to require that the United States be an indispensable party to all litigation affecting its interest in the property. Cf. *United States* v. *Roessling*, 280 F. 2d 933, 935-36 (5th Cir. 1960). As the Court said in *United States* v. *City of Greenville*, 118 F. 2d 963, 965 (4th Cir. 1941), "After the lien provided by the statute attaches, the property has in a sense two owners, the taxpayer and, to the extent of the lien, the United States. *Commissioner* v. *Coward*, 3 Cir. [1940], 110 F. 2d 725, 727. The lien cannot be affected by state legislation respecting the recording or registering of mortgages or liens."

We agree with the Government that the state proceedings, here, was an unconsented suit against the United States. While the Supreme Court in *Brosnan* refused to extend the doctrine of sovereign immunity when the United States and other junior lienholders "were not, nor required to be made, parties to the proceedings," 363 U.S. at 237, here, because the United States is an indispensable party, sovereign immunity is applicable. The Alien, 7 Wall 152. The Government's senior lien cannot be extinguished in any proceeding without its

consent to be sued, *Metropolitan Life Insurance Co.* v. *United States,* 107 F. 2d 311, 314 (6th Cir. 1939), and consent was not given to the suit in the Circuit Court of Cook County.

Bluhm, relying on *United States* v. *Bleasby,* 257 F. 2d 278 (3d Cir. 1958), claims that ownership of the property was determined in an *in rem* action in state court and the state court judgment cannot be collaterally attacked. In *Bleasby,* the state seized the proceeds of a bookmaking operation in a raid. Under the laws of New Jersey, contraband is forfeited to the state after a formal decree of forfeiture is obtained. While the state was in possession of the contraband, the United States filed a federal tax lien. The state court, in a proceeding in which the United States was not a party, entered a decree of forfeiture. The Third Circuit held that the *in rem* action in state court could not be collaterally attacked. *Bleasby* is distinguishable because that case involved the special area of contraband. When the federal tax lien attached, the bookmaker was no longer the owner of the property. The state was in possession with the right to obtain the property by forfeiture. This is no more a suit against the United States than the suit in *United States* v. *Brosnan,* 363 U.S. 237 (1960).

Bluhm next contends that under the Federal Tax Lien Act of 1966, he is entitled to the property. There is no disagreement that the Federal Tax Lien Act of 1966 creates a superpriority for real estate tax liens if the state so provides. The problem, however, is whether the Act is retroactive.

The Act provides:

> SEC. 114. EFFECTIVE DATE.
>
> (a) *General Rule.*—Except as otherwise provided, the amendments made by this title shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

(b) *Exceptions.*—The amendments made by this title shall not apply in any case—

(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

(2) in which such amendments would—

(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

(B) operate to increase the liability of any such person; or

(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

80 Stat. 1125, 1146.

Congress intended that whether or not the tax liens of the United States or the liens of the local government attached before November 2, 1966, the effective date, the superpriority for local tax liens under the 1966 Act applies. This meaning of the provision is derived by reading the General Rule with Exception (b)(1): Under this provision if the United States' enforcement of its lien has not "become final by judgment, sale, or agreement before the date of the enactment of this Act . . ." the superpriority will apply. H. Rep. No. 1884, 89th Cong. 2nd Sess. 81-82, 1966-2 Cum. Bull. 815, 873; S. Rep. No. 1708, 89th Cong. 2nd Sess. 35-36, 1966-2 Cum. Bull. 876, 901. Here, while the suit by the United States in the District Court was not filed until after the effective date, the local real estate tax liens were foreclosed on February 27, 1962. Since the property had already been sold for local taxes, the local government no longer had a lien on the property. Congress did not intent to include within the superpriority created by the 1966 Act local

liens which ceased to exist because of foreclosure. The Circuit Court of Cook County in 1964 could not adjudicate the rights of the federal government based on its prior filed tax lien under a law that did not exist until 1966. Thus, the federal tax liens are a valid encumbrance on the property of the taxpayer and were not discharged in the real estate tax sale.

AFFIRMED.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Friday, September 5, 1969
Before
Hon. Roger J. Kiley, Circuit Judge
Hon. Thomas E. Fairchild, Circuit Judge
Hon. Otto Kerner, Circuit Judge

United States of America, Plaintiff-Appellee, No. 17228 vs Jerome B. Bluhm, Intervening Defendant-Appellant.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

It Is Ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, Denied.

It Is Further Ordered that the opinion of this Court filed on July 25, 1969, be modified as follows:

On page 2, the first sentence in the paragraph beginning four lines from the bottom is changed to read as follows:

> The provision of 28 U.S.C. §2410 were not followed in the state court since while the United States was given notice of this litigation, it was not named a party to the proceedings in the state court and, therefore, the United States claims that the tax sale in the state court constituted a suit against the United States without its consent.[1]

On page 3, the last sentence on the footnote is deleted.

On page 5, in the 14th line from the top, the word "uncontested" is changed to read "unconsented."

On page 4, 6th line from top, "237" should be "241".

A corrected opinion will be printed and published.

APPENDIX B

OPINION OF THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause coming to be heard upon the motion of the United States of America, plaintiff herein, for summary judgment against the intervening-defendant, Jerome B. Bluhm, and the parties having filed memorandums in support of their positions, and the Court having examined the complaint, answers, plaintiff's motion for summary judgment and the memorandums in support and opposition thereto, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The United States commenced this action on December 24, 1964, to reduce to judgment federal tax liens outstanding against the defendant-taxpayers, John A. and Gertrude Amos, and to foreclose said liens against a parcel of real estate owned by the defendant-taxpayers.

2. The federal tax liens of the United States are based upon assessments for unpaid income taxes made against the defendant-taxpayers by a delegate of the Secretary of the Treasury of the United States. The present outstanding balance of these assessments and the dates of the filing of notice of the federal tax liens are more particularly set forth below:

Tax Period	Date of Assessment	Notice of Federal Tax Liens Filed*	Amount Outstanding**
1950	5/23/58	9/3/58	$ 48,678.57
1951	5/23/58	9/3/58	48,383.32
1952	5/23/58	9/3/58	37,100.42
1953	5/23/58	9/3/58	34,736.47
		Subtotal:	$170,898.78**
1954	2/ 3/61	4/10/61; 4/24/61	$ 1,023.53
1958	9/27/63	2/4/64	2,272.42
1957***	9/27/63	2/4/64	7,629.24
		Total:	$181,823.97**

*—Notice of federal tax liens filed at the Recorder of Deeds office of Cook County, Illinois.

**—Plus interest according to law from the date of the assessment.

***—Assessment made only against the defendant, John A. Amos.

(Amended Complaint, Paragraphs IV, V, VI, VII; memorandum in support of plaintiff's motion for summary judgment, Exhibit C.)

3. On May 18, 1960, the defendant-taxpayers submitted an offer to the Internal Revenue Service to compromise the assessments which had been made against them. This offer contained a provision whereby the defendant-taxpayers waived the running of the statute of limitations on collection for the period the offer was pending and for one-year thereafter. The offer was pending for approximately six months from the date of its submission until January 30, 1961, when it was rejected by the Internal Revenue Service. (Plaintiff's reply to memorandum in opposition to plaintiff's motion for summary judgment, Exhibits A, B.)

4. At the time when the notices of federal tax liens for the years 1950 through 1953 were filed with the Re-

corder of Deeds for Cook County, Illinois, the defendant-taxpayers owned an interest in a parcel of real estate known as 831 Ashland Avenue, Wilmette, Illinois, which was owned by the defendant-taxpayers as joint tenants, and which is described:

> The West seventy (70) feet of lot eight (8) in block three (3) in Milton H. Wilson's addition to Wilmette, said addition being a subdivision in fractional sections twenty-six (26) and twenty-seven (27), Township forty-two (42) North, Range thirteen (13), East of the Third Principal Meridian.

(Amended Complaint, Paragraph VIII; Intervenor's Answer, Paragraph VIII.)

5. On February 27, 1962, the real estate of the defendant-taxpayers described in paragraph 4 above was sold by the Treasurer and County Collector of Cook County, Illinois, at a public sale for unpaid county real estate taxes for the year 1960, at which sale a Certificate of Sale was issued to the Bonded Municipal Corporation. (Memorandum in support of plaintiff's motion for summary judgment, Exhibit A.)

6. On October 31, 1964, the Bonded Municipal Corporation filed a petition in the Circuit Court of Cook County, Illinois, County Division, entitled "In the Matter of the Application of the County Collector and Ex-Officio County Treasurer of Cook County, Illinois, for Judgment and Sale of Real Estate for General Taxes for the Year 1960," No. 64-Co-TD-1309, which stated that the period for redemption of the real estate described in paragraph 4 above from the real estate tax sale would expire on February 17, 1964, and that upon such date, the Bonded Municipal Corporation would seek an order directing the issuance of a tax deed to said real estate to the Bonded Municipal Corporation. (Memorandum in support of plaintiff's motion for summary judgment, Exhibit B.)

7. A copy of the Notice of the Petition for a Tax Deed, along with a copy of the Petition, were served upon

the United States by mailing copies of same to the Attorney General of the United States, and by serving the United States Attorney at his office in Chicago, Illinois. (Memorandum in opposition of plaintiff's motion for summary judgment, Exhibit A.)

8. The United States did not attempt to redeem the property from the state court proceeding mentioned in paragraph 7 above, and, in due course, a tax deed was issued to the Bonded Municipal Corporation. (Intervenor's Answer, Paragraph X, a.)

9. The tax deed issued by the state court passed by various mesne conveyances to the intervenor in this action, Jerome Bluhm, who acquired said tax deed on June 7, 1966, and on June 17, 1966, conveyed title to the Chicago Title and Trust Company, as trustee under the provisions of Trust No. 42,275, an Illinois land trust, over which the intervenor has the power of direction. (Intervenor's Answer, Paragraph X.)

10. At the time the intervenor obtained his interest in the subject real estate, notices of the federal tax liens described in paragraph 2 above had been filed of record with the office of the Recorder of Deeds for Cook County, Illinois, and there was of record in that office a notice of *lis pendens* which the United States had caused to be filed with respect to real estate described in paragraph 4 above upon the commencement of this action. (Memorandum in support of plaintiff's motion for summary judgment, p. 15, Exhibit D.)

11. On April 6, 1967, this Court entered judgment against the defendant-taxpayers on their joint and several federal tax liabilities in the sum of $210,101.13, and against the defendant, John A. Amos, on his individual federal tax liabilities in the additional sum of $9,575.27, which judgments were based upon the assessments made against the defendant-taxpayers as set forth in paragraph 2 above.

12. On September 29, 1967, this Court allowed the filing of the Answer of the intervenor, Jerome B. Bluhm, which asserted that the Federal Tax Lien Act of 1966 had invalidated the federal tax liens which had previously encumbered the real estate described in paragraph 4 above and had rendered his claim under the state tax deed to this real estate superior to the federal tax liens of the United States.

13. Subsequently, the United States filed its motion for summary judgment in this matter.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter of this litigation. (28 U.S.C. §§ 1340 and 1345, Section 7402 of the Internal Revenue Code of 1954.)

[1] 2. The statute of limitations on the collection of the assessments made against the defendant-taxpayers on May 23, 1958 had not run at the time of the commencement of the plaintiff's action on December 24, 1964. The normal six-year collection period which would have expired on or about May 23, 1964 was extended approximately one and one half years by the defendant-taxpayers' offer in compromise discussed in paragraph 3 of the Court's Findings of Fact and the commencement of the plaintiff's action was therefore timely. (Section 6502 of the Internal Revenue Code of 1954.)

3. The federal tax liens which arose upon the making of the assessment against the taxpayers on May 23, 1958, the outstanding balance of said assessments being in the sum of $170,898.78, plus interest as provided by law, attached to all of the property and rights to property of the defendant-taxpayers, John A. and Gertrude Amos, including the real estate described in paragraph 4 above, which is the subject matter of this action. (Section 6321 of the Internal Revenue Code of 1954.)

4. Prior to the enactment of the Federal Tax Lien Act of 1966, the federal tax liens arising out of the assess-

ments made on May 23, 1958, constituted an encumbrance on the subject real estate which was entitled to priority vis-a-vis the liens for unpaid 1960 real estate taxes under the doctrine of "first in time, first in right." (United States v. City of New Britain, 347 U.S. 81, 74 S.Ct. 367, 98 L.Ed. 520.)

[2] 5. The tax deed issued by the Circuit Court of Cook County in the proceeding instituted by the Bonded Municipal Corporation, the intervenor's predecessor in title, had, as of the date of its issuance, no effect on the liens which the United States had on the defendant-taxpayers' real estate, inasmuch as the liens of the United States were first in time and prior to the lien for unpaid real estate taxes, and the Circuit Court therefore did not obtain jurisdiction over the United States because of the doctrine of sovereign immunity. (United States v. Brosnan, 363 U.S. 237, 80 St.Ct. 108, 4 L.Ed.2d 1192.)

[3] 6. The proceeding in which the Circuit Court of Cook County granted a tax deed to the Bonded Municipal Corporation gave to the United States, the senior lienholder, only the right to redeem the real estate for the amount of the unpaid real estate taxes, and, therefore, was not the type of suit in which the United States had waived the doctrine of sovereign immunity by 28 U.S.C. § 2410 because it did not, *inter alia,* provide for the sale of the property concerned and distribution of the proceeds according to priorities, as required by 28 U.S.C. § 2410(c) (1964 ed.).

[4] 7. Section 6323(b) (6) of the Internal Revenue Code of 1954, as amended by Section 101 of the Federal Tax Lien Act of 1966, Public Law 89-719, 80 Stat. 1125, renders federal tax liens junior to liens securing local real estate taxes, if such real estate tax liens are entitled to priority under local law. This section is retroactive, in that after the effective date of the act, November 2, 1966, (Section 114 of the Federal Tax Lien Act of 1966) it applies to all federal tax liens, regardless of when they

arose, upon which enforcement or foreclosure had not previously been finalized by judgment, sale or agreement. (Section 114 of the Federal Tax Lien Act of 1966, Public Law 89-719, 80 Stat. 1146.)

[5] 8. The intervenor, Jerome B. Bluhm, traces his title to the sale by Cook County of the real estate concerned for delinquent real estate taxes for the year 1960, and is therefore subrogated to the lien for local taxes for that year, which lien is prior to the federal tax liens of the United States, by reason of the enactment of the Federal Tax Lien Act of 1966. (Section 6323(b) (6) of the Internal Revenue Code of 1954.)

[6] 9. The proceeding in the Circuit Court of Cook County which resulted in the issuance of a tax deed and the subsequent enactment of the Federal Tax Lien Act of 1966 did not combine to discharge the real estate under consideration from the federal tax liens which had attached prior to the enactment of this legislation. The Act provides that the amendments changing the priorities of existing federal tax liens apply after the effective date of the Act and therefore any attempt to adjudicate the rights of the United States with regard to its tax liens prior to the Federal Tax Lien Act of 1966 must be decided under the law as in effect at the time of the attempted adjudication. (Section 114 of the Federal Tax Lien Act of 1966, Public Law 89-719, 80 Stat. 1146.)

[7] 10. The federal tax liens thus remain a valid encumbrance on the property of the defendant-taxpayers described in paragraph 4 of the Court's Findings of Facts, as the state court proceeding which issued the tax deed to the intervenor's predecessor in title lacked jurisdiction over the United States, and this defect was not cured by the enactment of the Federal Tax Lien Act of 1966. The provisions of the Act did not purport to ratify attempts to determine federal tax liens which were void for lack of jurisdiction. (Sections 6323, 7425 of the Internal Revenue Code of 1954; 28 U.S.C.A. 2410; Section 114 of the Fed-

eral Tax Lien Act of 1966, Public Law 89-719, 80 Stat. 1146.)

11. The plaintiff, United States of America, is entitled to have summary judgment for the relief requested in its complaint in accordance with the Findings of Facts and Conclusions of Law stated herein, because there is no issue as to any material fact, and the United States is entitled to a judgment as a matter of law. (Rule 56, Federal Rules of Civil Procedure.)

ORDER

This cause coming to be heard upon the motion for summary judgment of the United States, plaintiff herein, against the intervening-defendant Jerome B. Bluhm, and the Court having on April 5, 1968, sustained the motion for summary judgment of the United States against the intervening-defendant Jerome B. Bluhm, and the Court having this date entered findings of fact and conclusions of law,

Now, therefore, it is ordered that the motion for summary judgment of the United States against the defendant, Jerome B. Bluhm, is sustained,

It is further ordered that the receiver herein Gerald P. Grace, sell the property commonly known as 831 Ashland Avenue, Wilmette, Illinois, in order to foreclose the tax liens of the United States against said property,

It is further ordered that the receiver herein, Gerald P. Grace, and the United States submit a judgment order providing for sale of the property commonly known as 831 Ashland Avenue, Wilmette, Illinois, pursuant to law.

APPENDIX C

PERTINENT PORTIONS OF STATUTES INVOLVED

§ 744. Chapter 120 Illinois Revised Statutes (Section 263 of Revenue Act of Illinois) Notice to owner, persons in possession and others—Extension of time for redemption

No purchaser or assignee of such purchaser of real estate sold for non-payment of general taxes or special assessments, shall be entitled to a deed until the following conditions have been complied with, to-wit: Such purchaser or assignee shall serve, or cause to be served, notice of such purchase, not less than 3 months prior to the date when the time of redemption, or extended time of redemption as hereinafter provided shall expire, upon the following persons: upon occupants or persons in actual possession of such real estate: upon the person in whose name the real estate was last assessed for general taxes, if, upon diligent inquiry, he or she can be found in the county; and upon the owners of or parties interested in such real estate, including trustees and mortgagees of record, if they can upon diligent inquiry be found in the county. If the person in whose name the real estate was last assessed for general taxes cannot upon diligent inquiry be found in the county, notice shall be sent by registered mail or certified mail, return receipt requested, to the address shown for such persons on the assessor's books. Such notice by registered or certified mail, return receipt requested, shall also be sent to the owners of or parties interested in such real estate, including trustees and mortgagees of record, provided such persons cannot upon diligent inquiry be found in the county. In such notices the purchaser, or his assignee, shall state when he purchased the real estate, in whose name last taxed, the description of the real

estate he has purchased, what taxes or special assessments were included in the judgment or decree for which the real estate was sold, and when the time of redemption will expire.

If such owners of such real estate or the parties interested therein cannot be found in the county and the person in actual occupancy or possession is tenant to, or in possession under the owners or the parties interested therein, then service of such notice upon the tenant or occupant or person in possession shall be deemed service upon such owners or parties interested. If no person is in possession or occupancy of such real estate, or if the person in whose name the same was last assessed for general taxes, upon diligent inquiry, cannot be found in the county, or if such owners of or parties interested in such real estate, including trustees and mortgagees of record, upon diligent inquiry, cannot be found in the county, that such purchaser or his assignee shall publish such notice, as to them, in some newspaper published in such county. If no newspaper is published in such county, then such notice shall be published in the newspaper that is published in this State nearest the county seat of the county in which such real estate is located. If such owners or parties interested are unknown to such purchaser or his assignee, then such publication, as to them, may be made to the unknown owner or parties interested as aforesaid. Such notice by publication shall be given 3 times, the first publication not more than 5 months, and the last publication not less than 3 months before the time of redemption expires. Such notice of publication shall include not to exceed one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where more than one lot, block, tract or piece of land is owned by one party or person, in which case all the lots, blocks, or tracts owned by such person may be included in one notice. The purchaser or assignee may extend the time of redemption for such real estate either before or after the expiration of

2 years from the date of sale for a period which will expire not later than 3 years from the date of the sale by filing with the county clerk of the county in which the real estate is located a written notice to that effect describing the real estate, stating the date of the sale and specifying the extended time of redemption. If the time of redemption is extended, the purchaser or assignee must give the notices herein provided at the specified times prior to the expiration of the extended period of redemption.

§ 747. Chapter 120 Illinois Revised Statutes (Section 266 of Revenue Act of Illinois) Petition for issuance of tax deed—Filing fee—Notice—Order—Fee of clerk—Writ of assistance—Effect of deed—Liberal construction

At any time within 5 months prior to the expiration of the time of redemption from the sale of any real estate for non-payment of taxes or special assessments, pursuant to judgment and order of sale on the County Collector's application for judgment and order of sale under the provisions of Section 225 of this Act, as amended, the purchaser or his assignee may file a petition in the circuit court in the same proceeding wherein the judgment of sale was entered upon which the sale was had, praying that the court direct the county clerk to issue a tax deed if the real estate is not redeemed from the sale. Such petition shall be accompanied by a filing fee of $15.00. Notice of the fact of filing the petition and the date on which the petitioner intends to make application for an order on the petition that a deed issue if the real estate is not redeemed from the sale shall be given to occupants, owners and persons interested in the real estate in the same manner as provided in Section 263, except that only one publication shall be required. The notice to occupants and the notice by publication shall be given not less than 3 months prior to the date fixed for making application that a deed issue. The purchaser

or his assignee may, if he desires, insert in the notice or notices required by Section 263 the fact of filing the petition for a tax deed and the date on which he intends to apply in the circuit court for an order for a deed if the real estate is not redeemed from the sale, in which case the notice provided by this Section shall not be required. The county clerk shall be notified of the filing of the petition and any person owning or interested in the real estate may, if he desires, appear in the proceeding. If the time of redemption expires and the real estate has not been redeemed from the sale and all taxes and special assessments which became due and payable subsequent to the sale have been paid and all forfeitures and sales which occur subsequent to the sale have been redeemed and the notices required by law have been given and the petitioner has complied with all the provisions of law entitling him to a deed, the court shall so find and shall enter an order directing the county clerk on the production of the certificate of purchase and a certified copy of the order, to issue to the purchaser or his assignee a tax deed. The county clerk is entitled to a fee of $5 for the issuance of the deed. The clerk may not include in such a deed more than one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where several such lots, blocks, tracts or pieces of land are owned by one party or person. If the court refuses to enter an order directing the county clerk to execute and deliver the tax deed, because of the failure of the purchaser to fulfill any of the above provisions, it shall order the return of the purchase price forthwith as in case of sales in error in all cases where the purchaser or his assignee has made a bona fide attempt to comply with the statutory requirements for the issuance of the tax deed. The court may, and upon application therefor shall, issue a writ of assistance to put the grantee in possession of the real estate and may enter such orders and issue such writs as may be necessary or desirable to maintain the grantee in possession of the real estate. Tax deeds issued pursuant to this section

are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. This section shall be liberally construed so that tax deeds herein provided for shall convey merchantable title. Tax deeds issued pursuant to this section are subject to section 266b of this Act.

§ 751. Chapter 120 Illinois Revised Statutes (Section 270 of Revenue Act of Illinois) Deed as evidence—Payments on restoration of title

Deeds executed by the country clerk as aforesaid are prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs or assigns, to the real estate thereby conveyed of the following facts: First—That the real estate conveyed was subject to taxation at the time the same was assessed and had been listed and assessed in the time and manner required by law. Second—That the taxes or special assessments were not paid at any time before the sale. Third—That the real estate conveyed had not been redeemed from the sale at the date of the deed. Fourth—That the real estate was advertised for sale in the manner and for the length of time required by law. Fifth—That the real estate was sold for taxes or special assessments as stated in the deed. Sixth—That the grantee in the deed was the purchaser or assignee of the purchaser. Seventh—That the sale was conducted in the manner required by law. And any judgment for the sale of real estate for delinquent taxes, except as otherwise provided in this Section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment or decree, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions, the judgment itself is conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax or special assessments have been paid or the real estate was exempt from general taxes under this Act or was not subject to special assessment:

Provided, that any judgment or decree of court, in law or equity, setting aside any tax deed procured under this Act, or restoring the owner of same to possession, shall provide that the claimant shall pay to the party holding such tax deed the following, to be estimated by the county clerk: All taxes and legal costs, as provided by law, with interest at 5% per annum, together with subsequent taxes and special assessments paid and the statutory fees and costs incurred; for the service of the notices provided by law which must be served by holders of certificates of sale to occupants, owners or parties interested in real estate sold for taxes, the sum of $3 for each lot, block, tract or piece of land, as listed, assessed and sold in one description; the filing fee in the circuit court; the actual cost paid to the county clerk for issuing the tax deed; the actual cost of recording the tax deed; $1 for publication fees for each lot, block, tract or piece of land as listed, assessed and sold in one description. No final judgment or decree of court in any case either at law or in equity or in proceedings under the Eminent Domain Act, involving the title to or interest in land in which such party holding such tax deed shall have an interest or setting aside any tax deed procured under this Act shall be entered until the claimant shall make reimbursement to the party holding such tax deed and payments as herein provided in so far as it shall appear that the holder of such deed or his assignors shall have properly paid or be entitled to in procuring such deed. The county clerk is entitled to a fee of $10 for preparing the estimate of the amount required to redeem and such estimate of the county clerk is prima facie evidence in all courts of the amounts due the tax title holder.

28 U.S.C. § 2410:

§ 2410. Actions affecting property on which United States has lien

(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the

United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the United States has or claims a mortgage or other lien.

(b) The complaint shall set forth with particularity the nature of the interest or lien of the United States. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

(c) A judicial sale in such action or suit shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States as may be provided with respect to such matters by the local law of the place where the property is situated. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a

first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head of the department or agency of the United States which has charge of the administration of the laws in respect of which the claim of the United States arises.

(d) Whenever any person has a lien upon any real or personal property, duly recorded in the jurisdiction in which the property is located, and a junior lien, other than a tax lien, in favor of the United States attaches to such property, such person may make a written request to the officer charged with the administration of the laws in respect of which the lien of the United States arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to wholly or party satisfy the lien of the United States, or that the claim of the United States has been satisfied or the lapse of time or otherwise has become unenforceable, such officer shall so report to the Comptroller General who may issue a certificate releasing the property from such lien.

Title 26 U.S.C., Sec. 6323. Validity and Priority Against Certain Persons.

"(a) Purchasers, Holders of Security Interests. Mechanic's Lienors, and Judgment Lien Creditors.—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

"(b) Protection for Certain Interests Even Though Notice Filed.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

* * *

"(6) Real property tax and special assessment liens.—With respect to real property, as against a

holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

"(A) a tax of general application levied by any taxing authority based upon the value of such property;

"(B) a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement;"

* * *

Section 114 of the Federal Tax Lien of 1966:

"Effective Date.

(a) General Rule.—Except as otherwise provided, the amendments made by this title *shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.* (Emphasis added)

(b) Exceptions.—The amendments made by this title shall not apply in any case—

(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

(2) in which such amendments would—

(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act; or

(B) operate to increase the liability of any such person; or

(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act."

* * *

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No. 890

In the Supreme Court of the United States

OCTOBER TERM, 1969

JEROME B. BLUHM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
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OPINIONS BELOW

The findings of fact and conclusions of law of the District Court (Pet. App. 10a–17a) are officially reported at 287 F. Supp. 886. The corrected opinion of the court of appeals (Pet. App. 1a–8a) is reported at 414 F. 2d 1240.

JURISDICTION

The judgment of the court of appeals was entered on July 25, 1969. On September 5, 1969, the court of appeals denied petitioner's timely petition for rehearing, and on September 9, 1969, it filed a corrected opinion. The petition for a writ of certiorari

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was filed November 28, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether previously filed federal tax liens were superior to an interest derived from later arising local tax liens which had been extinguished by judicial action prior to the effective date of the Federal Tax Lien Act of 1966.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 7–10.

STATEMENT

This action was brought by the United States on December 24, 1964, to reduce federal tax liens to judgment and to foreclose the liens against certain property (including real estate in Wilmette, Illinois) owned by taxpayers John and Gertrude Amos (R. 2, 13, 14).[1] A default judgment was entered against taxpayers (R. 16–17). The United States had federal tax liens on taxpayers' property by virtue of assessments and notices of federal tax liens which were filed with the Recorder of Deeds of Cook County, Illinois, as follows (Pet. App. 11a):[2]

[1] "R." refers to the appendix to petitioner's brief in the court of appeals, which is included in the record in this Court.

[2] On May 18, 1960, taxpayers submitted an offer in compromise to the Internal Revenue Service in which they waived the running of the statute of limitations on collection for the period the offer was pending and for one year thereafter. The offer was rejected on January 30, 1961, with the result that the period of limitations was extended to January, 1966 (Pet. App. 11a).

Taxable year	Date of assessment	Date notice of tax lien filed	Amount outstanding [1]
1950	May 23, 1958	September 3, 1958	$48,678.57
1951	do	do	48,383.32
1952	do	do	37,100.42
1953	do	do	34,736.47
1954	February 3, 1961	April 10 and 24, 1961	1,023.53
1958	September 27, 1963	February 4, 1964	2,272.42
1957	do	February 4, 1964	7,629.24
Total			181,823.97

[1] Plus interest, according to law.

Petitioner, who was allowed to intervene in the instant action (R. 18), claimed an interest in the Wilmette real estate superior to that of the United States. The taxpayers had been delinquent in the payment of their 1960 local real estate taxes and, accordingly, that property was sold at a tax sale on February 27, 1962 (R. 27–28). The property was not redeemed from the sale (the period of redemption having expired February 16, 1964); on October 31, 1964, the purchaser filed a petition for issuance of a tax deed, which the Circuit Court of Cook County issued on June 18, 1965 (R. 22, 28). That deed passed to petitioner, through mesne conveyances, on June 7, 1966 (R. 29). Notice of the petition for a tax deed had been given to the District Director of Internal Revenue in Chicago (R. 28), to the United States Attorney for the Northern District of Illinois (Pet. App. 12a–13a), and to the Attorney General in November, 1964 (R. 71), but the United States did not respond to the petition. At the time petitioner obtained his interest in the property on June 7, 1966, notices of the federal tax liens were on record at the office of the Recorder of Deeds of Cook County, and, at the same office, there was of

record a notice of *lis pendens* which the United States caused to be filed with respect to the property at the commencement of this action (R. 28–29, 53; Pet. App. 13a).

The District Court held that the interest of the United States was superior to that of petitioner and granted the United States' motion for summary judgment (Pet. App. 10a–17a). The court of appeals affirmed (Pet. App. 1a–8a).

ARGUMENT

The decision below, affirming that of the District Court, was correct. There is no conflict among the circuits, and there is no basis for further review.

1. The federal tax liens were first in time, and, under the law in effect at the relevant time, first in right. *United States* v. *New Britain*, 347 U.S. 81. Only a *junior* federal tax lien can be extinguished by state proceedings to which, as here, the United States is not a party, and the United States is an indispensable party to any proceeding purporting to adjudicate its rights under *senior* tax liens. *United States* v. *Brosnan*, 363 U.S. 237; *United States* v. *Roessling*, 280 F. 2d 933, 935–936 (C.A. 5). The well-established procedures of 28 U.S.C. 2410 (*infra*, pp. 8–10) for obtaining the United States' consent to be sued in such instances clearly were not followed in the state proceeding. Moreover, at all times pertinent to this proceeding and to the tax sale, Section 2410(*c*) has specifically provided that any sale to satisfy a lien junior to the interest of the United States (as in this case) does not affect the

senior interest of the United States unless the United States has consented that the purchaser may take free of such federal interest. No such consent was given in the instant case.

2. The Federal Tax Lien Act of 1966, P.L. 89–719, 80 Stat. 1125 (*infra*, p. 10) amended Section 6323, Internal Revenue Code of 1954, to provide that, even though notice of a federal tax lien has been filed, the holder of a lien on real property which secures the payment of an ad valorem tax of general application is entitled to priority over the federal tax lien if his lien entitles him, under local law, to priority over other security interests in the same propeity even if prior in time. Here, although the decision below was not filed until after the effective date of this amendment (November 2, 1966), the local real estate liens were satisfied long prior to that date, on February 27, 1962, when the property was sold. The superpriority created by the 1966 Act would have given priority to the local government lien if that lien had existed on the effective date, but there is nothing in the amendment that retroactively validates a previously extinguished lien, whether or not a particular mesne conveyance has later occurred. The state court in 1964 could not adjudicate the lien rights of the federal government under a law that did not exist until 1966.

3. The decision below does not conflict with *United States* v. *Bleasby*, 257 F. 2d 278 (C.A. 3), which presented unique questions involving the interrelationship of the New Jersey law regarding forfeiture of

contraband (cash admittedly used in gambling) and the federal law regarding priority of tax liens. The contraband was, under local law, deemed forfeited to the state not later than the date of seizure. This date was prior to the date the United States attemped to perfect its tax lien; therefore the taxpayer in *Bleasby* had no interest to which the lien could attach. The state court could obtain proper jurisdiction over the *res* without violating the principles of sovereign immunity because the United States claimed no interest in the property effective at the time of the relevant state proceedings. Cf. *Farley* v. *$168,400.97*, 55 N.J. 31, 259 A. 2d 201; *Spagnuolo* v. *Bonnet*, 16 N.J. 546, 109 A. 2. 623.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1970.

APPENDIX

Internal Revenue Code of 1954, Section 6323 [as amended by Sec. 101(a) of the Federal Tax Lien Act of 1966, P.L. 89–719, 80 Stat. 1125]. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

(a) *Purchases [Purchasers], Holders of Security Interests, Mechanic's Lienors, and Judgment Lien Creditors.*—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

(b) *Protection for Certain Interests Even Though Notice Filed.*—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid.—

* * * * *

(6) *Real property tax and special assessment liens.*—With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) a tax of general application levied by any taxing authority based upon the value of such property;

(B) a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

* * * * *

(26 U.S.C. 6323.)

28 U.S.C. 2410. Actions affecting property on which United States has lien.

(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the United States has or claims a mortgage or other lien.

(b) The complaint shall set forth with particularity the nature of the interest or lien of the United States. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

(c) A judicial sale in such action or suit shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United

States as may be provided with respect to such matters by the local law of the place where the property is situated. A sale to satisfy a lien inferior to one of the United States, shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head of the department or agency of the United States which has charge of the administration of the laws in respect of which the claim of the United States arises.

(d) Whenever any person has a lien upon any real or personal property, duly recorded in the jurisdiction in which the property is located, and a junior lien, other than a tax lien, in favor of the United States attaches to such property, such person may make a written request to the officer charged with the administration of the laws in respect of which the lien of the United States arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to wholly or partly satisfy the lien of the United States, or that the claim of the United States has been satisfied or by lapse of time or otherwise has become unenforceable, such officer shall so report to the Comptroller General who

may issue a certificate releasing the property from such lien.

Federal Tax Lien Act of 1966, P.L. 89–719, 80 Stat. 1125.

SEC. 114. EFFECTIVE DATE.

(a) *General Rule.*—Except as otherwise provided, the amendments made by this title shall apply after the date of enactment of this Act, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

(b) *Exceptions.*—The amendments made by this title shall not apply in any case—

(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

(2) in which such amendments would—

(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

(B) operate to increase the liability of any such person; or

(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

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U.S. GOVERNMENT PRINTING OFFICE: 1970